

**DECISION**

<sup>1987, 7</sup>  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

24964

**FILE:** B-206399; B-207258**DATE:** April 22, 1983**MATTER OF:** Interface Flooring Systems, Inc.**DIGEST:**

1. Where IFB required inclusion with bid of samples of carpet tile for floors and separate samples of broadloom carpeting for stairways, each of which had to meet particular specifications, but the protester submitted samples only for the carpet tile, the agency properly rejected the bid as non-responsive. Protester's subsequent declaration that it intended to furnish the same carpet for both uses is irrelevant, since that intention was not apparent from the bid as submitted.
2. Where bidder offered carpet which, according to the bid's cover letter, met required noise reduction coefficient of .25 and the agency determined actual conformance to the requirement from samples and other specifications with respect to pile material, height and density, any ambiguity created by accompanying bid data indicating a coefficient of .15 was properly waived, since it had no effect on price, quantity, quality or delivery.
3. It is not inconsistent for an agency to accept floor carpeting with a density factor greater than the minimum specified in the IFB, while rejecting the protester's stairway carpeting because it had primary and secondary backings and weighed 160 ounces per square yard when the specification required primary backing only and a minimum weight of 82 ounces. The increased density of the floor carpeting improved its utility and exceeded the agency's requirements, while the stairway carpeting's primary and secondary backing and excess weight rendered it unfit for stairway use.

825418

B-206399; B-207258

Interface Flooring Systems, Inc. has protested the rejection of its bid submitted to the Architect of the Capitol in response to invitation for bids (IFB) No. 8147 to provide carpet in a new extension to a Senate office building. The Architect found the bid to be nonresponsive and, as all other bids also were nonresponsive, he canceled the solicitation and issued resolicitation IFB No. 8226, for the same requirement. While an award under the second solicitation to B. Shehadi & Sons, Inc. was pending, Interface submitted a new protest to our Office contending Shehadi's bid was nonresponsive.

Interface's protests are denied.

IFB No. 8147

The first IFB solicited bids to provide carpet tile for floors, and broadloom carpeting for stairways. Bidders were required to provide with their bids two identical samples of each type of carpet material proposed to enable the Architect to determine conformance with the specifications. The minimum specifications for each type of carpet were essentially the same except the tile had to be in 18 x 18 inch squares, with a primary backing of 54 ounces per square yard of reinforced vinyl and a secondary backing of 70 ounces per square yard of reinforced vinyl hardback, while the broadloom backing had to consist of a minimum of 50 ounces per square yard of reinforced vinyl with spun-bonded polyester. The samples for both the carpet tile and the broadloom had to be in 18 x 18 inch squares, labeled with the manufacturer's name, and the number and the type of the carpeting. Bidders were also required to submit with their bids complete catalog data, including ratings, specifications and other information to show the type, quality and construction of the carpet being offered. The solicitation stated that failure to submit the samples would be cause for rejection of the bid, and failure to submit the data might be cause for rejection.

Interface submitted two samples for only one type of carpet, which met the specifications for the carpet tile. Although it attempted after bid opening to submit a conforming sample of broadloom carpet, it later contended that carpet of the type for which the samples were submitted

was intended to be used for both the carpet tile and the broadloom carpet. Interface suggests that the only real difference between the two is that 54-inch rolls are cut into 18-inch squares for carpet tile, and remain uncut when used as broadloom. Interface contends the carpet represented by the samples it submitted meets the specifications for the carpet tile and exceeds the specifications for the broadloom.

The Architect found the bid to be nonresponsive because the required samples were submitted only for the carpet tile. He contends the allegedly intended dual usage was not made clear in the bid, and that the carpet samples did not meet the specifications for the broadloom because the backing was unsuitable for stairway application. The Architect concedes Interface did include catalog data ratings and specifications for a number of series and styles, some of which did meet the specifications for broadloom, but states he could not determine which broadloom Interface intended to supply, if any.

The Architect also argues that Interface's bid was nonresponsive because it included literature which indicated that the company warranted the Interface products against "manufacturing defects" for 1 year from date of installation and excluded stairs from the warranty. The IFB required a warranty of all carpeting for 1 year from delivery against defects due to "the use of materials or workmanship which are inferior, defective, or not in accordance with the contract"; the Architect contends that the Interface warranty is more restrictive than that required by the IFB. Interface, however, contends the literature was not intended to alter the terms of the IFB and was irrelevant because by signing the bid it bound itself to all conditions of the IFB.

The test to be applied in determining the responsiveness of a bid is whether the bid as submitted is an offer to perform, without exception, the exact thing called for in the invitation, so that acceptance will bind the contractor to perform in accordance with all of the invitation's material terms and conditions. 49 Comp. Gen. 553, 556 (1970); The Entwistle Company, B-192990, February 15, 1979, 79-1 CPD 112. Where the language of an invitation

B-206399; B-207258

clearly states that a sample must be submitted with the invitation, the failure to do so generally will make a bid nonresponsive and require its rejection. 37 Comp. Gen. 845 (1958). Also, we have held that a bidder may not be permitted to make its nonresponsive bid responsive after bid opening, since that would be tantamount to permitting it to submit a new bid. Jack Young Associates, Inc., B-195531, September 20, 1979, 79-2 CPD 207.

IFB No. 8147 clearly reflected the Architect's requirement and anticipation of delivery of two types of carpet. It made reference in several places to "carpet tile and broadloom carpet" and set forth minimum specifications for each. If Interface intended to supply the same carpet for each use, it was incumbent upon the firm to make this intention clear in its bid, and Interface's failure to do so could not be explained after bid opening. See Pensacola Engraving Company, B-200712, February 27, 1981, 81-1 CPD 139. An essential element of a valid bid is that it be sufficiently definite in terms of what it offers to enable the contracting officer to accept it with confidence that an enforceable contract for all items solicited will result. See Wismer & Becker Contracting Engineers, B-202075, June 7, 1982, 82-1 CPD 538.

With regard to Interface's contention that by signing the IFB form, which contained a blanket statement of compliance with all requirements, it agreed to supply all products and perform all work in strict accordance with all provisions and specifications set forth in the IFB, we point out that a blanket statement of compliance is not sufficient to resolve an ambiguity in the bid itself. Lektro Incorporated, B-202212, June 15, 1981, 81-1 CPD 484.

Interface's failure to include with its bid samples for the broadloom requirement is, therefore, in itself of such significance to compel denial of Interface's protest. Consequently, we need not resolve the other issues raised: compliance of Interface's carpet tile with both the tile and broadloom specifications; whether the unsolicited literature should have been considered; and whether the warranty offered in the literature was more restrictive than that required by the IFB. Even if Interface were to prevail on all of these issues, the bid could not be accepted. See Honeywell, Inc., B-205093, March 16, 1982, 82-1 CPD 248.

IFB No. 8226

Interface first contends the award to Shehadi under the second solicitation while its first protest was pending violated procurement regulations, and was contrary to assurances made by the Architect's representative at a bid protest conference at this Office on the first protest that no award would be made until our Office issued its decision on that protest. The Architect denies any such assurance, and we confirm that his representative stated at the conference only that the situation was urgent because of the building schedules and he did not know when the need for carpeting would become critical. The Architect further states his representative was not aware at that time that the Architect had already determined the carpeting had to be delivered no later than July 6, 1982.

In our view, while the record may reveal a lack of communication within the Architect's office in this matter, it does not indicate any impropriety or prejudice to the rights of Interface. In any event, even assuming the award should not have been made to Shehadi while the protest was pending, the legality of the award would not be affected. SAI Comsystems Corporation, B-196163, February 6, 1980, 80-1 CPD 100.

Interface's bid in response to the resolicitation again was higher than that of Shehadi, but this time Interface submitted the required samples of both carpet tile and broadloom carpet. When the Architect announced his intention to make award to Shehadi, Interface protested on grounds that Shehadi's bid should have been rejected as nonresponsive for a number of reasons, and that the Architect had applied a different standard when it found Shehadi's bid responsive than was applied when Interface's first bid was rejected.

Interface first protests that Shehadi's bid should have been rejected because the offered carpet did not comply with the specified noise reduction coefficient (NRC) of "25". While Shehadi's bid was accompanied by a letter stating that the proposed carpet and broadloom each had an NRC of "25", the construction specifications of the manufacturer which were also submitted indicated an NRC for carpet tile of "on concrete .15" and the NRC for the broadloom was listed as "N/A".

The Architect states that it was not until after receipt of Interface's protest that he became aware of the discrepancies in Shehadi's bid. He then had an investigation conducted after which he concluded that the discrepancies were minor informalities or irregularities because they did not affect price, quantity, quality, or delivery and therefore did not affect the responsiveness of Shehadi's bid. The Architect asserts that, due to a typographical error, the NRC for the carpet tile was specified in the IFB as "25" rather than ".25," an error that Shehadi simply repeated in its bid, and he points out that the solicitation did not specify any NRC for the broadloom. The Architect was informed by the architects he had engaged for the project that the NRC is a statement of the rate of decay of sound in a reverberant room due to the introduction of materials such as carpeting and is basically a function of pile materials, height and density. He was further informed that by specifying exacting standards for pile material, height and density, the specifications themselves effectively determined what the NRC would be, and that bidders would not be able to change the NRC in any significant respect if their carpeting met those specifications. The Architect insists that Shehadi's carpet in fact did meet all of the specifications, including the NRC of .25.

We first point out that there is no indication that the specified NRC of 25 rather than .25 misled or confused any potential or actual bidders, including Interface.

As to the alleged ambiguity arising from Shehadi's letter specifying an NRC of 25 while the test data specified an NRC of .15, Interface has not refuted the Architect's contention that any carpet meeting the other specifications would necessarily meet the desired NRC of .25. Indeed, the Architect determined from the samples furnished with Shehadi's bid that the firm's carpet does in fact meet the desired NRC of .25, rather than the 25 or .15 as set forth in Shehadi's letter and test data.

Although, as a general rule, a bid must be rejected as nonresponsive where it does not strictly conform to the solicitations terms and conditions, this rule does not apply to deviations that are immaterial, or matters of form rather than of substance. Such deviations do not render a bid nonresponsive. Federal Procurement Regulations § 1-2.405 (1964 ed.); Roorda, Inc., B-192443, November 22, 1978, 78-2 CPD 359.

We believe the discrepancy in Shehadi's bid was properly waived. It had no effect upon price, quantity, quality or delivery and, based on examination of the samples and the effect of the other specifications, the carpet in fact meets the desired NRC requirement.

Interface also contends Shehadi's carpet did not comply with the required yarn weight of 28 ounces per square yard because, while the bid stated a yarn weight of 28 ounces per square yard, it also stated that its "effective yarn weight" was 26.3, with no explanation as to the meaning of "effective yarn weight." The Architect points out that there was no specification for "effective yarn weight" and that Shehadi met the only weight requirement by offering carpet with a weight of the specified 28 ounces.

We believe any ambiguity with respect to the meaning of the term "effective yarn weight" is irrelevant since there was no specified yarn weight requirement other than that the carpet weight be 28 ounces per square yard, which Shehadi's carpet met, as stated in its bid. There is no evidence that a lesser "effective yarn weight" compromised this compliance in any way.

Interface further complains that while the specifications for broadloom required a backing consisting of a minimum of 50 ounces per square yard of reinforced vinyl with spun-bonded polyester, Shehadi's bid indicated its backing material consisted of reinforced vinyl with "Reemay," with no explanation as to what Reemay was. The record shows however, that "Reemay" merely is a brand name for a backing. Also, the Architect determined by an examination of the samples submitted that the carpet met all specifications with respect to the backing.

In our view, Shehadi's use of the term "Reemay" is irrelevant to the bid's acceptability because there was no doubt as to what Shehadi would actually provide. Indeed, Interface does not even contend that the backing of Shehadi's broadloom carpet is noncompliant, but only that Shehadi's reference to it as "Reemay" somehow created an ambiguity.

Interface further contends that Shehadi's carpet has the potential for an undesirable appearance because it does not have a "balanced pile" construction. Interface explains that with balanced pile construction, the ends per inch of the yarn used in the carpet roughly equal twice the number of rows per inch. Interface states that the requirement that the carpet be "evenly constructed without noticeable unevenness on the top surface, marks across the carpet, tufts missing in tile or objectionable streaks lengthwise of weave" led Interface to believe that carpeting with balanced pile construction should be offered. Interface admits that the solicitation did not expressly require balanced pile construction, but suggests only that the cited specification reflects a desire for high quality carpet, and asserts that carpet with balanced pile construction is of such high quality. The Architect states he did not specify a balanced pile construction because he did not consider it necessary to meet his minimum needs, and that to have done so would most likely have restricted competition only to Interface.

The Architect's failure to specify balanced pile construction was clear from the face of the solicitation. The Architect's minimum needs, consistent with obtaining maximum practicable competition, dictated only that carpeting meet the requirements actually specified in the solicitation. Bidders are not required to meet unstated specifications in order to be eligible for award. To the extent that Interface may be implying that balanced pile construction should have been required, the record shows that such a requirement would have restricted competition and that in the absence of fraud or willful misconduct, such a contention would not be reviewable under our bid protest function. See Edcliff Instruments, B-205371, April 26, 1982, 82-1 CPD 380.

Interface points out Shehadi's bid indicated a density factor of 377,897, which exceeds the specified density factor of "325,198 minimum." Interface argues that if the Architect saw fit to reject Interface's first bid because the backing for the broadloom exceeded specifications, he also should reject Shehadi's bid for exceeding a specification. The Architect, however, insists that even if Interface's first bid had been rejected because of excessive backing on the carpet proposed as broadloom, consistency would not require rejection of Shehadi's bid because



of excess density. While the excess density of Shehadi's carpet improved the utility of the carpet as a floor covering, the Architect contends the secondary and primary backing of the carpet initially offered by Interface, and its weight of 160 ounces per square yard instead of the specified primary backing and minimum weight of 82 ounces, rendered Interface's carpet too inflexible and therefore unfit for use on stairways. He states the backing requirement was specified as a minimum to permit maximum competition by accommodating slight variations.

We agree that the excess density and the excessive backing do not present analogous situations, and that the Architect was not unreasonable in accepting the excess density after having rejected the excessive backing. The increased density resulted in a superior product that exceeded the specifications at the lowest price bid; the addition of the secondary backing resulted in a product which, in the reasoned judgment of the Architect, was unfit for its intended use. Under the circumstances, there was no prohibition against accepting the excess density. 48 Comp. Gen. 685 (1969); 38 Comp. Gen. 830 (1959).

The protests are denied.

*Larry D. Van Cleave*  
for Comptroller General  
of the United States